

**IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN**

Amalgamated Transit Union, Local 1005

and

**BMS Case No. 07-PA-0919**

Metro Transit (Michelle Harris)

---

**NAME OF ARBITRATOR:**

George Latimer  
Assistant Faith Latimer

**DATE AND PLACE OF HEARING:**

July 27, 2007  
Parker Rosen, LLC  
133 First Avenue North, Minneapolis, MN 55401

**DATE OF AWARD:**

August 13, 2007

**APPEARANCES**

**FOR THE EMPLOYER:**

Andrew D. Parker, Attorney  
Gene Sheldon, Supervisor Vehicle Maintenance  
Rick Carey, QA and Training Supervisor  
Vehicle Maintenance  
Marcia Keown, Labor Relations Specialist  
Paul L. Swanson, QA Training Supervisor  
Michael R. DeWolf, Electro-Mechanical Technician –  
Working Foreperson  
John McKay, Supervisor Vehicle Maintenance

**FOR THE UNION:**

Roger A. Jensen, Attorney  
Michelle Harris, Grievant  
Scott Tollin, Asst. B.A. ATU Local 1005

## **INTRODUCTION**

The Grievant, Michelle Harris Bellfield has been employed by Metro Transit (Employer) since 1996, most of that time as a Bus Operator. The Grievant possessed an Associate Degree in and had been employed as an Electronics Technician and Electro Mechanical Technician at Honeywell Corporation. In January 2006 she applied for an Electro Mechanical Technician position (or EM). In February/March 2006 she applied and was promoted to a Stockkeeper position. In July 2006 she was promoted to an EM position in the Rail Vehicle Maintenance Department of Metro Transit.

On November 30, 2006 the Employer disqualified the Grievant as an EM and returned her to her Stockkeeper position effective December 2, 2006. (Employer Ex 1 and 3, Joint Ex 2)

The Union grieved this action. The dispute was processed through the grievance process outlined in the collective bargaining agreement between the parties and was appealed to Arbitration. At this Arbitration hearing both parties had full opportunity to present evidence and examine witnesses. Advocates for both parties made oral closing arguments and the record was closed on July 27, 2007.

## **STATEMENT OF THE ISSUE**

Did the Employer violate Article 6 Section 8 of the Collective Bargaining Agreement when it disqualified the Grievant from an Electro Mechanical Technician position, and returned her to her previous Stockkeeper position? If yes, what shall the remedy be?

## **RELEVANT CONTRACT PROVISIONS**

### Article 4

#### **MANAGEMENT PREROGATIVES**

The ATU recognizes that all matters pertaining to the conduct and operations of the business are vested in Metro Transit and agrees that the following matters specifically mentioned are a function of the management of the business, including without intent to exclude things of a similar nature not specified, the type and amount of equipment, machinery and other facilities to be used; the number of employees required on any work in any department; the routes and schedules of its buses; “the standard of ability, performance and physical fitness of its employees and rules and regulations requisite to safety. Metro Transit shall not be required to submit such matters to the Board of Arbitration provided by Article 13. (Emphasis added)

As to the standard of ability, performance and physical fitness of its employees above mentioned Metro Transit agrees to submit to the Board of Arbitration only the claim by the ATU of

discrimination against employees in the same group in the application of these standards.  
(Emphasis added)

It is understood and agreed, however, that in all such matters Metro Transit will consider, insofar as practicable, the convenience and comfort of its employees.

Article 6 Seniority as Applied to Lay-off, Hiring & Transferring  
Section 8

In the event Metro Transit has openings in positions...Effective August 01, 2003: An employee transferring shall not continue to accumulate seniority in the old department. If said employee should not qualify within the six (6) month evaluation period and/or be medically disqualified from this current position, the employee shall be transferred back to the former classification with accumulated seniority in that department. (Emphasis added) (Joint Exhibit 1)

**UNION POSITION**

The Union argues the Grievant was not afforded the full six month time period set forth in the contract to qualify for the position of Electro Mechanical Technician. The Union and the Grievant acknowledge she now lacks the necessary skills and experience to successfully perform the job. If provided with proper training and opportunity for practice for the contractual six month period she may well have qualified. The Grievant is entitled to that opportunity.

The Grievant testified she applied for this position in the good faith belief that her training in Electronics was appropriate for a position of Electro Mechanical Technician. She testified she always performed whatever tasks were asked of her, and put forth her very best effort in this position. She acknowledged that many of the mechanic tasks were unfamiliar to her, and that she needed more 'hands on' practice performing those tasks.

The Grievant stated she wanted to work the 3<sup>rd</sup> shift more than she was permitted to. Because there are so many more light rail cars being serviced during 3<sup>rd</sup> shift, she believed that shift afforded more opportunity for practice than the others.

The Grievant further stated that her supervisors did not make it clear to her that the various evaluations (listed in Employer Exhibit 12) were qualifying tests, rather than ongoing evaluation tools. She also asserted that one of her coworkers was permitted to retake a test after initially failing it. She was not given the same opportunity.

The Union argues that the details of Ms. Harris's performance deficiencies are not relevant. This dispute does not center on that issue, and the fact that she is not currently qualified for the job is undisputed. Rather, the Union must prevail based on the language in

Article 6 Section 8. A transferring employee is entitled to a “six-month evaluation period”. The grievant was denied the full evaluation period required by the contract.

## **EMPLOYER POSITION**

The Employer position is that the Grievant was clearly unqualified for the Electro Mechanical Technician position. It is critical for Metro Transit operations that mechanics be competent to perform the required tasks correctly and safely. The Grievant and other new employees were put on a training program consisting of two weeks of orientation, rules, and instruction, followed by a schedule of shadowing current mechanics performing various tasks of the job. (Employer Exhibit 7, Employer opening statement, testimony of Rick Carey) During the months of August, September, October and November 2006 the Grievant was trained on a long list of tasks performed by EMs on the Light Rail side of Met Transit. During the month of November she failed a number of tests given to new employees. Management determined the Grievant lacked the necessary competence to perform this job.

Vehicle Maintenance Supervisor Gene Sheldon testified that he met with the Grievant and the three other new employees at the beginning of their training period. They reviewed the required tasks. He informed the employees they would be “tested on everything”. He also explained they used a system of rotating the employees through the shifts, so that they each got experience on each shift. Since the Grievant was most senior, she had first choice of shifts. She chose second shift. In the month of August he agreed to another employee’s request to work third shift, leaving the Grievant on second shift along with a second training employee. In October the Grievant requested the day (first) shift, which he granted. Ms. Harris worked third shift the month of November, in keeping with the plan for the employees to work all shifts. (Testimony of Gene Sheldon, Employer Exhibits 7& 8)

Mr. Sheldon testified he was in daily contact with the three working foremen who were working with the new employees. He believed the list of “benchmarks” evaluated on the November “LEM Certification” form were basic tasks which the new employees should have been able to master fairly quickly. They included many safety sensitive tasks, including working on brakes, a crucial part of the job (Employer Exhibit 12& 16). He stated there had been two other training employees in previous years who had also not qualified and were transferred back

to their previous positions with Metro Transit. He had not known any other employees with as little ability to perform the job tasks as the Grievant. (Employer Exhibits 4&5)

Employer witnesses Rick Carey (Quality Assurance and Training Supervisor), Paul L. Swanson (Quality Assurance Trainer) and Michael De Wolf (Working Foreperson) all testified that the Grievant took far more time to accomplish tasks than other training employees, and that she seemed unfamiliar with aspects of the job which they considered to be basic, such as using the multimeter, familiarity with electrical circuit trouble shooting, and changing break pads. Mr. Carey testified that he met with the Grievant every other week during the training period, and that he told her several times he was available by phone or e-mail if she had particular questions. He stated he gave the Grievant the "LEM Certification" list of skills which all training employees would be expected to demonstrate. The other training employees were provided with the same list, and it was also posted on the worksite. (Emp Ex 16) Mr. Carey testified he checked the 'scan' records and verified that the Grievant had scanned in on all the required tasks. (Employer Exhibit 10)

With respect to the contract language, the Employer argues that the phrase "If said employee should not qualify within the six (6) month evaluation period" means that the Employer is evaluating a training employee throughout the six month time period, and may determine at any point within that period whether or not the employee has qualified for the position. This is the interpretation the Employer has always given to that piece of language, and has in the past made "disqualify" decisions in less than six months. Further, the Employer asserts the management right to make decisions concerning the qualifications of its employees in keeping with Article 4. There is no standing for the Union to challenge such determinations, absent evidence of arbitrary or capricious conduct. In this case there is clearly no such evidence. The Grievant was not even close to competent to perform the critical, safety sensitive functions of an EM. She was given the same opportunities as other training employees were. The Employer made a legitimate business decision to transfer the Grievant back to her previous position.

## **ARBITRATOR'S ANALYSIS AND AWARD**

A notice of job opening for an EM technician was posted on Thursday, January 19, 2006. The primary purpose of the position was to “provide the maintenance skills required to maintain mechanical, electrical/electronic, and hydraulic and pneumatic systems of light rail vehicles in a timely and safe manner. Provide maintenance and repair of all light rail system support equipment for safe reliable operation.” (Employer Exhibit 2)

Clearly the Employer has the right to determine the necessary skills and qualifications of its employees, nor does the Union dispute that. The Grievant candidly testified that she had failed a number of the qualifying tests, before being disqualified on November 30. Four witnesses with experience performing the EM functions gave credible testimony about the Grievant's inability to successfully complete many of the tasks in a timely manner. Employer Exhibit 12 verifies the Grievant failed four of the required skills demonstrations (VOM usage, brake system test, PTE, and Robojack test). This document and testimony also indicate the Grievant was in fact permitted to repeat a test, as one other training employee did.

With respect to the question of notice regarding the skills evaluations, both Mr. Carey and Mr. Sheldon testified that Ms. Harris was verbally told she would be tested. The written notice signed by Ms. Harris states clearly: “For those in the evaluation process, these skills will be demonstrated no later than December 1, 2006”.(Emp Ex 16)

The Grievant believed that her schooling and previous Electro Technician job experience would have prepared her for this position. The Arbitrator finds that credible and understandable. It is unfortunate that there may have been some distance between the job description, and job requirements.

The Employer's right to determine whether an employee is qualified to perform a job (as set forth in Article 4) is not challenged by the Union in this case. Rather, the Union argues that the language of Article 6, Section 8 requires the Employer to withhold its decision until the passage of six months, which in this case would not occur until January 22, 2007 rather than on December 1, 2006. Standing alone the plain language, “within the six (6) month qualifying period” would not seem to support the Union's interpretation. No evidence was presented of language in other parts of the contract which would fortify that view. Nor was there evidence of an understanding between the parties that the Employer is bound to wait a full six months.

With credible testimony that the qualification decision was made for legitimate substantive reasons, and no evidence to support the Union's proscriptive reading of the relevant contract language, the Arbitrator finds no violation of the contract. The Grievance is denied.

---

George Latimer, Arbitrator

8/13/2007

---

Date